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JAMES H. McKENN

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1906.

JOHNSTON ARMSTRONG, Receiver,
Appellant,

vs.

JAMES A. ASHLEY et al.,
Appellees.

No. 122.

BRIEF FOR APPELLEES.

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Statement.

This case is an outgrowth of Bradshaw *versus* Ashley, decided by the court below in 14 D. C. App., 485, and affirmed in 180 U. S., 59. One Bradshaw, acting as the grantee and agent of John H. Walter, had taken forcible possession of the lots of ground in controversy, namely, lots 1, 2, 3 and 20, otherwise known as lots 3, 4, 5 and 6, in Square 939, in the City of Washington, of which the appellees and those under whom they claim had been for years in possession, accomplishing the disseizin by the aid of a mob of colored men armed with sticks and stones (Record, pp. 144–5), relying upon an obscurity in

the title occasioned by a confusion in the original partition of the lots in square 939, referred to in the opinion of this court at page 60, in 180 U. S., and more fully described in 14 D. C. App., 485–7. The appellees originally brought ejectment to recover ink lot 1, being the lot on which Bradshaw had erected a brick structure to hold possession, but subsequently amended their declaration so as to embrace the other lots in dispute, the amendment embracing the realty involved in the present controversy, and upon which, during the pendency of the ejectment proceedings and subsequently to the amendment, he erected the dwelling houses described in the bill, borrowing for the purpose $20,000 from the New South Building and Loan Association of New Orleans, Louisiana, which Association is now represented by the appellant as receiver.

The bill alleges that, in accordance with its plan of organization, a "Local Board" of the Association was formed in the District of Columbia to promote sales of shares or interests therein; that it was customary for this Local Board to pass on applications for loans, forwarding them to the Association, but not being regarded by it as its agents, although the title to property offered as security for its loans was to be examined by an attorney elected by the Local Board; that the said District of Columbia Local Board elected Walter to be its president and one Aughinbaugh its attorney; that Bradshaw made application to this Local Board for a loan upon the property against which the ejectment suits, as amended, were then pending, upon which application the Local Board reported favorably, and Aughinbaugh furnished a certificate showing a fee-simple title in Bradshaw, without reporting the ejectment suits, pursuant to a fraudulent

scheme of conspiracy entered into between Aughinbaugh, Walter and Bradshaw for the purpose of defrauding the Association, Aughinbaugh being paid by Bradshaw eight times the usual charge for a title examination for his services in so doing; that the Association made the loan accordingly, and advanced $20,000 to Bradshaw in aid of his said building operations, being misled by Aughinbaugh's certificate, and being further provided by Walter with a chain of title from the Real Estate Title Insurance Company purporting to show a continuous and apparently complete *record* title, but not purporting to show any actions or suits at law affecting the same; that the defendant, James A. Ashley, representing himself and the other appellees, knew of the erection of the buildings by and with the money of the Association during the progress of the work, that the Association would not have made its advances had it known of the condition of the title or of the ejectment suits then pending, and that the appellees knew, from the record, of the deed of trust given by Bradshaw to secure the Association for its said advances, that it was advancing the said funds for the purposes of aiding in the erection of the said buildings, and, also, from the said deed of trust, what was the domicile of the Association and its officers, but that, notwithstanding such knowledge, the appellees did not give the Association notice of the ejectment suits, but stood by and permitted the said expenditures to be made, to the great loss and injury of the Association; that the value of the improvements was in the neighborhood of $20,000, and was twice as great as the value of the land on which they were placed, and that the silence of the appellees in this respect was misleading and calculated to aid and abet the fraud and deceit of Walter, Bradshaw and Aughinbaugh;

that, irrespective of such conduct on the part of the appellees, the Association, having investigated the title with diligence, and having acted in good faith and without notice of defects in the title of Bradshaw, or of the adverse claims of the appellees, was entitled to an equitable lien; and that, upon both these grounds, it is entitled to have its advances declared an equitable lien upon the lots, so improved by its moneys, for which it prays accordingly.

The deed of trust to secure the Association, printed at p. 12 of the Record, conveys the property in dispute, under the description of sub-lots 48 to 53 made by Walter of lots in square numbered 939, to John Harrison Kennard and Johnston Armstrong, of New Orleans, La., trustees, to secure Bradshaw's bond in the penal sum of $40,000 to the New South Building and Loan Association of New Orleans, La., conditioned for repayment to the Association of advances aggregating $20,000, in monthly installments upon shares of stock held by him, together with fines and forfeitures, etc.

The appellees, by their answer, admit that, at the time of the execution of the deed of trust, and for several years prior thereto, there were then pending the ejectment suits mentioned in the bill, covering the lots 1, 2, 3 and 20, otherwise known as lots 3, 4, 5 and 6, which suits, prior to the filing of the bill, were finally determined in their favor; that George Walker, under whom Bradshaw and Walter pretended to claim, had been a speculative investor in Washington real estate at the time of the foundation of the city, but had shortly thereafter abandoned his purchases and the country, neither he nor any one claiming under him having paid any taxes or exercised any acts of ownership for more than three-quarters of a century prior to the entry upon his holdings by Walter

and Bradshaw in the manner above described; that the appellees had no knowledge of the deed of trust to Kennard and Armstrong, or of the advances from the Building Association, prior to completion of the houses; that the deed of trust was executed and the advances made long after the institution of the ejectment suits, and when they were at issue and awaiting trial; that, upon any diligent or proper examination of title, not only would the pendency of these suits have been disclosed, but the further fact would have appeared that the Walker title had been made the subject of tax deeds for very many years prior to the Bradshaw deed of trust, that the lots had come down through a regular chain of conveyance, extending through nearly three-quarters of a century, to the defendants and to those under whom they claim, who had paid the taxes thereon and thereunder throughout that long period, that the character of the business in which Walter was engaged was a matter of great notoriety in the District of Columbia, and that the fact and circumstances of the forcible possession taken of the property in controversy were also well known in the community; that the appellees were without knowledge of the relations between the Building Association and its Local Board, or chargeable with any notice of or concerned with those relations; that if the Association was made the victim of the frauds alleged to have been practiced upon it by its president, its attorney for the District of Columbia, and by Bradshaw, no one of the appellees was cognizant of the said frauds, in any manner connected therewith, or possessed of any knowledge whatever of the same, but they were wholly free from any participation therein or connection therewith, of any kind or character whatsoever; that there is no color of truth for the allega-

tion of the bill that its advances during the erection of the buildings referred to were within the personal knowledge of any of them ; that they were, on the contrary, wholly ignorant of the source from which the moneys in question were procured, and that they gave to one Childs, whom they understood was constructing the houses, the notice set out at page 23 of the Record, that he would be held liable as a trespasser upon their premises, and that the erection of the said structures was not with their authority ; that it was not until February, 1895, or nearly a year after the completion of the buildings, that they learned through the then attorney of the Association, in connection with an effort for compromising the ejectment suits, that the Association had made the advances stated, and that they then offered to sell to it the lots on which the houses stood, at their then market value, but that the Association, instead of accepting that proposition, employed counsel to aid Bradshaw and Walter in their efforts to defeat the just rights of the defendants in the premises, providing counsel, furnishing the appeal bond which carried the case to the Supreme Court of the United States, and, itself, carrying on the litigation until the affirmance by this Court of the decision below rendered further contest impossible, thereby subjecting the defendants to an amount of costs and expenses, tax arrearages and penalties, and of depreciation in market value while the litigation was in progress, materially exceeding the present value of the improvements so erected; that it was no part of their business to protect the Building Association by investigating its transactions, ascertaining its relations with its own officers and agents, and informing it of their alleged frauds, even if the appellees had been aware of the same, which they deny ; that they had no notice of the exist-

ence of the Association, in New Orleans or elsewhere, or of its loans and advances, and still less of their procurement by the frauds alleged, having had no occasion to consult the land records, and not having in fact done so, at or after the time of the Bradshaw deed of trust, and claiming the benefit of the foregoing and other facts alleged in the answer as though they had demurred to the bill.

As to two of the allegations of the answer, namely, that the defendants gave to Childs, the ostensible builder of the houses, at least at the early stages of the work (see Record, p. 136), notice of their claims as alleged, and that after discovery of the alleged fraud upon the Association, they made to it the proposition presented in Exhibit B to the answer (Record, p. 24), the opposing brief claims no proof was offered.

The first of these allegations, being directly responsive to the charge that the appellees stood by in silence, in bad faith, while the houses were being erected, giving no notice that they claimed title to the lots which were being improved, required no proof, in the first instance, at the hands of the appellees. As to the second of them, made in this court for the first time, not only was the proposition contained in a letter addressed to the attorney of the Association, Mr. Acker, called as a witness and examined at great length by the appellant without attempting to have him deny its receipt, but here, as below, the appellant admits in his brief (pp. 29-30) the making of this proposition by and on behalf of the appellees, and attempts to argue from it their admission, in an unaccepted offer of compromise, that their interests should be "treated on the basis of 'unimproved' land."

After issue had been joined upon the questions and facts raised by the answer, after the testimony in support

and on behalf of the complainants had been completed, and when the time limited in which to take the defendant's testimony had nearly expired, the complainants made the motion to amend set forth at page 27 of the Record, which motion the court, probably because unable to gather the facts of the complicated case sufficiently upon an interlocutory application of that character, denied without prejudice to the complainant to renew the application at the hearing of the case.

The objects of the amendment were, first, to escape the weight of the burden of proof imposed under the rule in equity, the answer being under oath, by waiving, at that stage of the case, after the answer was already in the testimony nearly closed, the requirement that the answer should be under oath ; and, secondly, by setting up the fact, made apparent by the evidence, that the Association did not make its loan at the time of the Aughinbaugh's certificate of title, or in reliance upon it, that certificate bearing date May 26, 1893 (Record, pp. 179–80), but in reliance upon a further examination and continuation of title made by Mr. Walter H. Acker at or about the date of the Bradshaw deed of trust, which was October 28, 1893, and offering as a new ground of equity or relief that Mr. Acker was misled by the fact that two volumes in the office of the Supreme Court of the District of Columbia, purporting to contain a complete index to all pending ejectment suits, and "universally used by those examining or making continuations of title", did not note the amendments of the declaration in the ejectment suits, which embraced the property upon which the dwelling houses are erected. At the hearing, the court considered the allegations of the amended bill to the extent, only, of holding that the two volumes in question,

improvised by the clerk without any authority or requirement of law, were without competency or legal effect, and that no omissions or defects in them excused examination of the original, legally required records, or subjected the appellees to any responsibility. See Opinion, pp. 283–4.

As shown by the testimony of Alfred G. Buhrman (Record, pp. 242–247) and John R. Young (pp. 277–280), the two volumes in question are not dockets created or provided for by law, but simply memorandum books "gotten out merely for the use of the clerk—the benefit of the clerk"; * * * not for "the public at large, but for the information of the clerk and his assistants"; having been first compiled for that purpose in January, 1893; that it is neither the business nor the custom for the clerk of the court to examine amended declarations; that it was simply through courtesy that attorneys were allowed the use of the two volumes in question, and that the dockets themselves are regarded by the clerk as the more accurate, being the original entries, while the two volumes in question are simply books of reference, not prepared for the purposes of title searchers, the original papers in ejectment suits, moreover, being public records and accessible to all, and that the two volumes in question originated in the mere private act of the clerk himself, not called for by any act or law and to which no notoriety was given, the object being largely to save the handling of the dockets, and for easier reference, the papers themselves being always accessible for purposes of accuracy.

Although the appellant called two title examiners as experts—Mr. James J. Becker (p. 87) and Mr. John D. Coughlan (p. 95)—no effort was made to prove that title examiners, "universally" or otherwise, relied upon these

memorandum books of the clerk for the purposes of title examination; and Mr. Acker himself states frankly (p. 115) that the books in question were not provided for by any law that he is aware of; that he should call them mere memoranda in the clerk's office, and (at p. 119) that he cannot name any title examiner or lawyer who uses them as sufficient evidence of the pendency of ejectment suits without examining the original papers, though he "presumes" there are such. The chancellor below, who must be presumed to know what are the official records of his own court, declares in his opinion (Record, pp. 283–4), that they are without legal authority or effect. And see the testimony of the clerk who prepared them, first in 1893, prior to which time they had no existence, Record, 243, 277.

As is shown by the Record, Bradshaw's first application for a loan, in connection with which the Aughinbaugh title certificate was furnished, was rejected by the Association, the loan being granted upon a second application, when the Association was represented by Mr. Acker, whose good faith is unquestioned. Some effort was made below to escape the effect of these facts by claiming that, although they are true, yet Acker was employed only to continue the title examination from May 26, 1893, the date of the Aughinbaugh certificate, to November 1, 1893, at which time the second application was acted upon favorably and the loan granted, the Association relying upon the Aughinbaugh certificate as to the period which it covered, and upon Mr. Acker's certificate only as to the intervening period.

This claim presents this dilemma: If Mr. Acker was employed to examine the title only from May 26, 1893, to November 1, 1893, the alleged defects in the clerk's

memorandum books cannot be relied upon as having misled anyone, since the amendments to the ejectment suits were made March 6, 1893 (p. 213), and therefore not within the period which the Acker examination covered; while, if Mr. Acker's examination was to cover a period prior to May 26, 1893, which is the only basis for claiming that he was misled by the clerk's memorandum books, then the Association's advances cannot be attributed to the bad faith of Aughinbaugh, since it had other and independent counsel, whose integrity is not impugned.

But the Record further shows that, independently of the ejectment suits, both the Association and its counsel had express notice of the claims of the appellees to the property in dispute, or at least such notice as placed upon them the duty of inquiry, and furnished them with easy means of information. In March, 1890, the appellees had filed a bill in equity against Walter, Bradshaw and others, setting up their claim to the lots by virtue of their prior possession, alleging that both Bradshaw and Walter knew of their title, and that they had placed on record their deeds from the pretended heirs of George Walter simply for the purpose of clouding the title of the appellees, and of obtaining "hush-money" from them (Record, pp. 233-236). Aughinbaugh reported the pendency of this suit in his certificate of May 26, 1893 (p. 180), though referring to it as "of no vital importance." The District Title Insurance Company (p. 182) reported it as having been dismissed for want of prosecution, "without prejudice." Mr. Armstrong, the assistant attorney of the Association, in his letter to Mr. Acker of October 23, 1903, before the loan was made, calls attention to the fact that the dismissal was "without prejudice," and asks to be advised as to "the exact purport of this expression,"

while Mr. Kennard, the general counsel of the Association, whose duty it was to examine the abstracts of all titles outside of the State of Louisiana (p. 77), and to whom the local attorney, in addition to his own opinion, was required to send a complete abstract, giving everything necessary to show whether the title was good (p. 84), testifies at page 62 that he knew that the dismissal "without prejudice" terminated the suit without finally adjudicating the rights of the parties, and leaving to the complainants the right to bring another suit. If, therefore, no ejectment suits had been instituted at the time of the Bradshaw deed of trust, the evidence adduced on behalf of the appellant, himself, shows clearly that the Association made its advances with notice of the fact that the appellees had an adverse claim, and that reference by it to the bill filed in the court below, of the existence of which it had specific knowledge, would have shown the fraudulent character of the Walter-Bradshaw title, or at least of the appellees' claims in that regard, which is all the knowledge which express notice from them could have afforded.

The claim of the bill that, although the Local Board passed on applications for loans, and elected the attorney who was to examine the titles, it was not regarded as the Association's agent, even if tenable in law, is not supported by any evidence in the case. On the contrary, its president and general attorney, Mr. Kennard, testifies, at page 52, that the shareholders of the local boards selected "an attorney to represent the Association at that place, and transactions of a local nature were put in his charge, and loans, particularly, were consummated by him and papers were sent to him for such action as was necessary for the completion of a loan." The manner in which the

Association communicated with the local attorney, and the character of the business which it entrusted to him for transaction, are shown by Exhibit W. W. M. No. 3, at pages 173-4 of the Record. Mr. Acker, the only Washington local attorney the method of whose appointment is disclosed in the Record, states that he was employed by Mr. Brevard, the general agent of the Association (p. 100), that he did not think he represented the local board, that he never attended or was invited to attend any of its meetings, and that he did not know of its existence except by hearsay (Record, p. 118).

With respect to the Real Estate Title Insurance Company's chain of title, to which some importance was attempted to be attached at the hearing below, it was a chain which omitted all reference to the tax deeds, and the conveyances under them, which were the only conveyances affecting the property for a period running back three-quarters of a century, by the express direction of Walter, president of the Association's Local Board (Record, pp. 92–3), an unusual form of such chains, calculated to mislead and deceive (pp. 95, 97), and yet, notwithstanding this unusual feature, it showed to anyone familiar with title examinations in this District that the property had been originally allotted to George Walker, and that practically a century intervened before any other conveyances were made purporting to be by or under him, there being general, common knowledge among title examiners that a great many conveyances affecting the property allotted to him, had intervened (Record, p. 97). The record further shows that, as to the conveyances to Walter by persons purporting to be the heirs of George Walker, it was a well-known fact that he had always failed to meet the issue as to the genuineness of these deeds in

the ejectment suits arising under them, and that he had in no instance undertaken to substantiate his claim that the parties purporting to have executed them were in fact heirs of George Walker (Record, p. 98).

As to the allegation of the bill that the appellees knew, during the erection of the houses, that they were being constructod with moneys advanced by the Association, no proof whatever was offered or attempted. The case upon this point rests upon the allegation of the bill, and the distinct and positive denial of it in the answer. Evidence was offered, it is true, that the record of the Bradshaw deed of trust was noted in the publication known as the Court Record, and that notice of the building permit to Bradshaw to erect six brick buildings on Lots 48 to 53, Square 939, appeared in the public notices of such matters in the daily papers at the time; but there is no evidence that these notices came to the attention of the appellees, all of whom were non-residents except James A. Ashley; nor, if noticed, was there anything in them even remotely relating either to the Building Association or to its advances.

The untenableness of the claim that the record of the Bradshaw deed of trust was notice to the appellees of its contents is illustrated by the testimony of Mr. Acker. He was a member of the bar, a practitioner before the court, the attorney for the Association, and an examiner of titles; and yet he not only repudiates the suggestion that, in any of these capacities, he is chargeable with notice of the ejectment suits, equally matters of record with the deed of trust, but declares the very suggestion of such notice to be "perfectfully absurd" (Record, p. 114).

The allegations of the answer to the effect that George Walker was a speculative investor in Washington real

estate at the time the city was founded, and that he shortly thereafter abandoned both his purchases and the country, exercising no acts of ownership for nearly a century prior to the entry of Bradshaw and Walter, are not only proven to be true, but to have been known to Mr. Acker, the attorney employed by the Association (Record, p. 111). Mr. Acker's testimony proves the further allegations of the answer that the Association employed counsel to aid Bradshaw in his ejectment suits, and furnished the bond to enable him to prosecute his appeals and continue the litigation for years (pp. 108, 112, 113); and that it did this after obtaining knowledge of the fact, undenied by Bradshaw, that the latter had gotten possession of the property in dispute by employing a negro mob, armed with sticks and clubs, to protect his forcible entry both during the day and at night until he could erect a small brick building upon it, the negroes singing "We'll Hold the Fort" while so employed and engaged in his service (Record, pp. 144–5). These suits, thus maintained through the Association's assistance, Mr. Acker shows were both protracted and costly (Record, pp. 111–12); while the testimony of the appellee Beardsley (Record, pp. 256–266) shows that they subjected the appellees to an expense of more than $7,000.

A remaining issue of fact between the parties is as to the extent to which the houses increased the value of the land, and how such increased value compares with the cost of the litigation which the Association assisted to impose upon the appellees after its knowledge of the fraudulent character of the Walter-Bradshaw title, and with the loss to the appellees in other ways.

Two witnesses, Mr. Clark and Mr. Getz, testify that the six houses could be built to-day for $3,200 each, and they estimate their depreciation in value during the ten years

since their construction at only $200 each, making their present value $18,000. It is quite evident from the testimony of both Mr. Clark and Mr. Getz, however, that their examination of these houses was an entirely superficial one, Mr. Getz in term so stating. As an illustration of the character of Mr. Clark's estimate, he figures the brick that went into the buildings at $7 per thousand, which in round numbers would be $2,000 for the brick in the six houses (Record, p. 129); while the testimony of Charles Childs (Record, pp. 161–5) shows that, with the exception of about $80 worth of new brick (p. 164) and of $186.25 for press brick (153), the houses were built from the old brick contained in an abandoned brick kiln, costing in all only $100—as to the most of which "the life was all burned out of that entirely by the intense heat" (Record, p. 165). "It was merely a lot of old junk that was sold like anything else and no record made of it" (Record, p. 163). The brick were laid by colored laborers, superintended by a man who had been a watchman and foreman of a gang of men carrying clay from an earth-bank to the machine in a brick yard at wages of $2.00 per day (Record, pp. 135–6, 162). These are, all of them, the facts as proved by the appellant's witnesses.

The walls were tarred to keep the rain out, and there were holes in them which one could see through from the outside (pp. 249–50).

Mr. Henderson, a real estate owner and dealer who averages building from one dozen to two dozen houses per annum, states that the houses could be built, now, for $1,800 (p. 249), and that they are not worth to-day over $1,400 (p. 250) or about $8,000 for the six. They are 16 feet front by 35 feet in depth, while Mr. Henderson testifies that he built 14 houses last year, with a frontage of

17 feet and a depth of 55 feet each, of a very much better character, for $2,700 each.

That the litigation involved loss to the appellees by the depreciation of their property during the years through which it was protracted, is admitted on both sides, Mr. Acker making the loss about fifteen cents per square foot (p. 107), and Mr. Henderson thirty cents per square foot (p. 249), the area being upwards of 24,000 square feet. Not only so, but although possession of the property was delivered to the Association by Bradshaw in trust expressly, among other things, to collect the rents and pay the taxes (pp. 191–21), it ceased to pay the taxes at the first trial, when it learned the true character of the Bradshaw title, although it still continued the litigation and collected the rents (pp. 113–14); so that, at its end, the appellees received the property loaded down with tax sales, arrearages and penalties. They were unable themselves to pay the taxes during litigation without thereby recognizing and binding themselves by a sub-division of the lots which Walter had made, assuming to be the owner, the District refusing their offer to pay the taxes upon the property as they held it, in original lots (Record, p. 263).

Points and Authorities.

Upon the facts of this case, as established by the record, few if any legal questions are presented requiring the citation of authorities.

As to the claim of the Association that it was defrauded by Walter and Aughinbaugh, they were its own agents, for whose fraud it would be responsible to third persons, and for which, *a fortiori*, it clearly cannot hold third persons responsible to it.

Certain authorities are cited at pp. 56–7 of the appellant's brief for the proposition that failure to learn of the ejectment suits is excused, because knowledge of them was fraudulently withheld by the attorney and agents of the Association. The registration or record system would be of little value if the notice they afford can be escaped in this way. The authorities cited are to a very different effect, namely, that knowledge possessed or gained by an agent in a different employment will not be imputed to the principal under such circumstances.

Its claim that the appellees knew it was advancing the moneys for the erection of the buildings is distinctly denied by the answers, and, so far from being supported by the testimony of two witnesses, or by one witness and corroborating circumstances, it is unsupported by the testimony of any witness at all.

Its claim that the record of the Bradshaw deed of trust was notice to the appellee is evidently a misconception of the registration laws. Those laws do not require of any one that he shall actually know everything which third persons choose to state in a deed, which they record; but, simply, that he shall examine the records before accepting a conveyance of real estate, and, if he does not do so, that he be charged, in legal effect, with the knowledge which such examination would have afforded him, and must take his title subject to such knowledge. As above noted, the attorney and principal witness for the Association, Mr. Acker, characterizes as "perfectly absurd" any suggestion that a man is supposed to have actual knowledge of all the facts which the public records disclose, and he is manifestly correct in so doing.

The record does not stop, however, with establishing the fact that the Association, if deceived at all, was de-

ceived by its own agents. Its own testimony, at page 174, shows that it had actual notice, on October 23, 1893, prior to the first of its advances, that an equity suit had been filed by the appellees, which set up an adverse claim or title to the property upon which it was asked to make the advances, and that, although the bill in that case had been dismissed, the dismissal had been "without prejudice," which its general counsel in New Orleans knew was a dismissal leaving the claimants free to bring another suit to enforce their title. The slightest examination of that suit, as the record also shows, would have disclosed to the Association all that it now knows in regard to the character of the Bradshaw title, or of the claims of the appellees in regard to the property, or which any notice the appellees could have given would have conveyed.

That even one who has in good faith, and without notice or negligence upon his part, improved real estate under an honest belief in his title, but who is afterwards evicted through a latent defect in the title, a case infinitely stronger than the present, cannot recover the cost of his improvements by a bill against the successful evictor, has been long and conclusively established. Williams *vs.* Gibbs, 20 How., 538; Anderson *vs.* Reid, 14 D. C. App., 54. The citation of authorities upon this proposition might be multiplied indefinitely, if the foregoing were not conclusive. How can a mere lender of money to one who makes improvements, with full knowledge and in bad faith, claim to do so?

It is respectfully submitted that the decree of the court below was correct, and should be affirmed.

J. J. DARLINGTON,
Counsel for Appellees.